

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----  
ANAUYS PICHARDO and PALOMA  
VILLALONA,

Plaintiffs,

**ORDER**

16-CV-03933 (MKB) (ST)

v.

MADIBA CORPORATION, doing business as  
MADIBA RESTAURANT, and MARK P.  
HENEGAN,

Defendants.

-----  
MARGO K. BRODIE, United States District Judge:

Plaintiffs Anaurs Pichardo and Paloma Villalona commenced the above-captioned action on July 15, 2016, against Defendants Madiba Corporation, doing business as Madiba Restaurant, and Mark P. Henegan, alleging violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”), and New York Labor Law § 190 *et seq.* (“NYLL”). (Compl., Docket Entry No. 1.) By Report and Recommendation dated June 12, 2018, Magistrate Judge Steven L. Tiscione *sua sponte* recommended that the Court dismiss Plaintiffs’ claims for failure to prosecute (the “R&R”). (R&R 5, Docket Entry No. 34.) For the reasons set forth below, the Court adopts the R&R and dismisses Plaintiffs’ claims for failure to prosecute.

**I. Background**

On July 15, 2016, attorney Laura Gerace Rodriguez of Pechman Law Group PLLC filed a notice of appearance as counsel for Plaintiffs. (Notice of Appearance dated July 15, 2016, Docket Entry No. 5.) On September 8, 2017, Rodriguez moved to withdraw as counsel for Plaintiffs, citing a deterioration of the attorney-client relationship due to Plaintiffs’ failure to

communicate with counsel and the existence of an irreconcilable conflict between Plaintiffs and counsel. (Mot. to Withdraw, Docket Entry No. 26; Mem. in Supp. of Mot. to Withdraw, Docket Entry No. 27.) Although Magistrate Judge Tiscione ordered Plaintiffs and counsel for Plaintiffs to appear for a conference on September 25, 2017, Plaintiffs failed to appear. (Order dated Sept. 8, 2017; Minute Entry dated Sept. 25, 2017, Docket Entry No. 30.) Magistrate Judge Tiscione ordered Plaintiffs' counsel to file a status report by October 27, 2017, indicating whether Plaintiffs would proceed with the case and advising Plaintiffs that if they failed to comply with the court's order, he would recommend that the case be dismissed for failure to prosecute. (Minute Entry dated Sept. 25, 2017, Docket Entry No. 30.) Plaintiffs' counsel filed a status report on October 26, 2017, indicating that Plaintiffs had not confirmed their intention to continue litigating. (Status Report dated Oct. 26, 2017, Docket No. 31.) In addition, counsel for Plaintiffs also renewed her request to withdraw as counsel. (*Id.*) Counsel filed a similar report on February 20, 2018, in response to the Court's order for an updated status report. (Order dated Feb. 20, 2018; Status Report dated Feb. 20, 2018, Docket No. 32.)

By Order dated June 12, 2018, Magistrate Judge Tiscione granted counsel's motion to withdraw. (Order dated June 12, 2018, Docket Entry No. 33.) On the same day, Judge Tiscione *sua sponte* issued the R&R recommending that the Court dismiss Plaintiffs' claims without prejudice for failure to prosecute. (R&R 3.) The R&R was mailed to Plaintiffs. None of the parties have objected to the R&R.

## **II. Discussion**

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "[F]ailure to object timely to a magistrate judge's report may operate

as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.” *Eustache v. Home Depot U.S.A., Inc.*, 621 F. App’x 86, 87 (2d Cir. 2015) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s Report and Recommendation if the party fails to file timely objections designating the particular issue.” (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1).

### **III. Conclusion**

For the foregoing reasons, the Court dismisses the action for failure to prosecute. The Clerk of Court is directed to close this case.

Dated: December 11, 2018  
Brooklyn, New York

SO ORDERED:

s/ MKB  
MARGO K. BRODIE  
United States District Judge